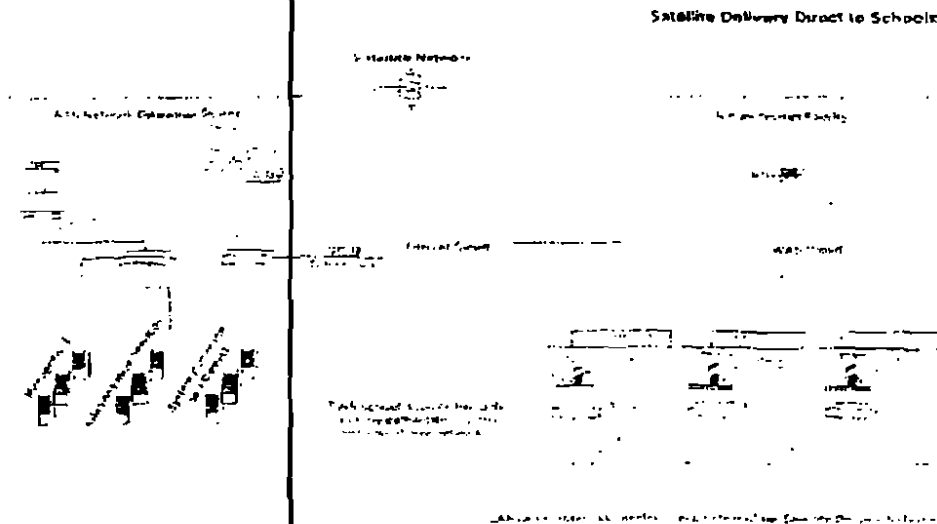


The delivery of the information occurs in the following three (3) modalities:

**AchieveXpress - Video On Demand**

AchieveXpress is a fully managed service that electronically delivers instructional materials on teacher demand to an Achieve Telecom-provided routing server that is connected to the Teacher's local network. The key feature of AchieveXpress is the underlying infrastructure that enables School District selected applications to provide users with the maximum benefit and increase the School District's ability to share high-quality resources (video, audio and text assets) across the entire teaching and learning spectrum and across all grades, teachers and students by means of this on-demand and robust distributed network service. The basic network architecture for AchieveXpress fully managed is shown in the diagram below:



In simple but powerful terms, AchieveXpress services creates the delivery highway over a dedicated WAN, supplied by Achieve Telecom, for multimedia content to the customer's LAN for use by identified learners.

All AchieveXpress fully managed services, as shown in the diagrams above are composed of the following four (4) key elements:

1. Network. The service includes satellite and terrestrial networks for distributing content and for quickly accessing the Internet. Typically, the service is deployed with a dedicated WAN, supported by two-way satellite connections and supplied by Achieve Telecom, to provide connectivity between schools in the District. This network can provide for live interactive TV or videoconferencing with multicasting of programs and associated teaching content from at a central School District location to the Achieve NDC and then to satellite receivers at the schools. Bandwidth on this network will be

- provisioned to support the aggregate usage and will initially be configured for 5 Mbps (burstable).
2. Network Operations Center The NOC provides overall network management and control.
  3. School on-premise equipment. The AchieveXpress equipment installed at each school receives the content delivery, interfaces with the WAN, stores the delivered content and then re-serves it on-demand over the LAN to the students and teachers. At one or more locations in the School District, AchieveXpress also provides the Interactive TV server to facilitate the use of Interactive TV that originates from the media center to multiple learners across the AchieveXpress network. Videoconferencing can also be added at designated locations.
  4. Equipment installation and service. The AchieveXpress solution provides full installation, support and help desk/maintenance services as well as associated documentation, IT staff and end user training as a fully-managed service.

This is a complete turnkey end-to-end distance learning service that can be combined with rich media educational videos and lessons from third-party distributors designed to take advantage of the latest educational technologies.

#### 4.4 AchieveXpress Technical Specifications

This section provides the system specifications for all AchieveXpress services.

The specifications for the hardware and software to be installed in each customer site are described in this section. The On-Premise equipment is an integral part of the Telecommunications Service. The following conditions apply.

- A. The on-premise equipment will be provided by the same service provider that provides the eligible telecommunications or Internet access service of which it is a part.
- B. Responsibility for maintaining the equipment rests with the service provider, not the school or library.
- C. Ownership of the equipment will not transfer to the school or library in the future, and the relevant contract or lease does not include an option to purchase the equipment by the school or library.
- D. Upfront, capital charges of the on-premise equipment are less than 67% of total charges (recurring plus non-recurring) in the funding year.
- E. The equipment will not be used by the school or library for any purpose other than receipt of the eligible telecommunications or Internet access service of which it is a part.
- F. The Local Area Network of the school or library is functional without dependence on the equipment.
- G. There is no contractual, technical, or other limitation that would prevent the service provider from using its network equipment in part for other customers.

At each site, the following complement of equipment will be provided:

A Ku-band two-way satellite antenna dish, with an aperture of approximately 1.2m, will be installed at each school in districts to provide the satellite WAN network. The satellite dish's LNB output will be fed to the distribution server for demodulation and digitization.

A routing server will be installed in the school's data closet. Achieve Telecom has selected its routing server for its performance, breadth of functionality, and manageability as follows:

- Reception of video and other education materials via the satellite downlink and/or terrestrial network. The routing server shall include the capability to receive multicast distributions that have been transmitted via a reliable, compressed format and to automatically reconstruct and request any missing transmissions. Content may be periodically refreshed by the central distribution server, which transmits only the changes that have been made. Any change in content on the origin servers is automatically reflected throughout the network.
- Storage of videos and related educational material for playback over the school's LAN. Storage shall be configured in a RAID 5 (Redundant Array of Independent Disks) manner, such that failure of any single disk does not cause loss of content or a system failure. Video storage shall be sufficient to store at least 250 titles (125 hours), where the average title is 30 minutes long and encoded at 1 Mbps (approx. 80 GB).
- Routing server streaming functionality. The delivery server shall stream high quality video over IP using an embedded application-layer Windows Media Technology server. This server shall stream videos encoded in Windows Media format to end users, controlling bandwidth and connection quality while enabling videos to be played even when the Internet connection to the NOC is not operational. Additionally, the server shall support both MPEG1 and MPEG2 video streaming to end user PCs.

The Achieve Telecom routing server supports overall service and content management by providing the hosting center with the following information:

- Periodic status updates, reflecting the health of the server and associated applications.
- Remote configuration interface, enabling Achieve Telecom to centrally configure and control the equipment from the hosting center and to remotely distribute software upgrades to the system.
- Content usage data, identifying who saw what, when, and with what quality.
- Content status storage utilization, identifying content stored on the Achieve Telecom server.
- Connectivity between the Achieve Telecom server and the school's LAN shall be via a 100 Base-T Ethernet interface. The Achieve Telecom server shall provide an

additional Ethernet interface to provide additional or redundant connectivity to the LAN or to a remote site. The school's infrastructure should provide a minimum of one switched Ethernet connection to each classroom, VLAN connectivity to the Internet and a public IP address.

The routing server shall be interoperable with the content distribution, webcasting authentication, network management, remote administration, and log aggregation protocols employed by the NOC central routing server used by the network operations and hosting service.

A dedicated distance learning circuit will be installed in a selected location(s) to provide enhanced multimedia interface, master control, live MPEG 1, 2, and 4 encoding, multipoint control, video channel modulation and amplification and serving. The dedicated distance learning circuit uses network-friendly IP multicast and is extremely efficient for large audiences by sending one stream of data per program to an unlimited number of viewers simultaneously.

The AchieveXpress IC service supports all Windows, UNIX, VIX, VAX Mbone tools, and Apple QuickTime workstations and allows any viewer who is watching the program to submit a text-based question online. The interactive TV software presents the questions to the speaker for immediate response or archives them for follow up later.

The AchieveXpress SlideCast feature delivers PC-generated presentation materials in one viewing window, while the presenter appears in another. Viewers see both windows with the actual demonstration materials and the speaker describing them on screen, much the same as if they were in the same room, instead of at a remote site. Also, with the AchieveXpress Web Presenter feature, viewers can launch a video window and Web pages concurrently for enriched understanding. The AchieveXpress IC StreamWatch gathers viewer demographics, such as number of viewers, their identities and their viewing times.

The AchieveXpress VC service begins with a Multipoint Control Unit that allows multiple participants in multiple locations to attend the same meeting with full real-time interactivity. Next, there is the Multimedia Conference Manager, which provides an H.323 Gatekeeper/Proxy and an ISDN Gateway. Combine these videoconferencing management tools with the H.323-compliant endpoints, all running over the AchieveXpress VC network infrastructure, and we can create a complete videoconferencing solution.

These products, and the services they enable, such as collaborative meetings, conferences, distance learning, and more, are developed for the School District to provide a reliable and cost-effective network infrastructure for videoconferencing application deployment. The AchieveXpress VC service enables video applications over IP networks and at the same time, integrates legacy H.320 systems - protecting the School District's original investment in videoconferencing.

AchieveXpress VC capability is real-time, two-way interactive video and can include IP capabilities in any locations. The network will support real-time transfer in both directions. AchieveXpress VC offers decentralized multipoint capability and intelligent bandwidth scaling to adapt to fluctuations in network traffic. We offer steady-state 150-200ms latency in multipoint calls and will display four CIF video streams simultaneously (all at 30 fps).

The network for AchieveXpress VC will provide up to 4-way continuous presence video and 8-way continuous presence audio in a single conference, built-in collaboration to share computer documents, multipoint control of all conference, Preview Mode for local multimedia presentations, Windows® based, drag and drop user interface, floating chair control and mixed CIF/QCIF/mixed bit rate conferences

AchieveXpress VC is designed specifically for dedicated distance learning applications and is designed for ease of use for non-technical users. Please see the pricelist for specific E-rate eligibility details but the technical details are as follows:

#### CODEC elements:

Supports H.323, H.324, and the Integration of H.320

- 30fps @ 384 and greater
- Minimum transmission speed at 384kbs
- Support for 2nd camera, document camera, VCR from separate inputs, 2 simultaneous displays (s-video) and 2 VGA outs
- Voice tracking both on board and add-on
- Web based remote basic management
- Supports TCP/IP and provides DHCP services both client and server
- Supports Microsoft NetMeeting
- Live video streaming capability using Apple QuickTime, Real Player, and/or Microsoft Windows Media
- One integrated remote control unit
- 10/100 Ethernet port
- Integrated (codec, camera and microphone) tabletop or monitor set top solutions (see pricelist)
- 1 year parts and labor warranty (with option to purchase year 2 and 3 extended warranty)

Achieve Telecom will install the equipment, and provide the necessary hardware to support this installation, including the following:

- Two-way satellite antenna (1.2m) and roof or exterior wall mounting kit.
- Routing server with mounting hardware. The routing server will be available either in a router/card, 1 RU (1.75") EIA standard rack-mount or in a tower configuration. During the installation survey, a determination will be made as to the best configuration for each school or library.
- AchieveXpress IC service with all software preloaded for service to provide enhanced multimedia interface, master control, live MPEG 1 and 2 encoding, multipoint control, video channel modulation and amplification and serving Videoconferencing equipment at designated locations.
- Cabling between the routing server and the a) satellite antenna, b) access router, and c) LAN switch. Cabling between the Interactive TV server, AchieveXpress VC equipment and the two-way satellite antenna

#### 4.5 The AchieveXpress User Experience

The AchieveXpress service provides the school system with the tools to create interactive distance learning programming for video-on-demand, interactive TV and videoconferencing that are hosted on the Achieve Telecom servers at the school and transmitted via two-way satellite through the Network Operating Center.

The AchieveXpress portal integrates a video library browser, distribution and playback tool with web-based lesson management. The portal is a web-based tool that is accessed by teachers and students using the Microsoft Internet Explorer browser.

The AchieveXpress video management service brings the highest quality education media to the classroom, and does so by employing the following functionality:

- **Browsing.** Teachers may browse the video title selection available from both school and from home, searching by applicable grade level, course, keyword, etc. The browser displays available information describing the video, its constituent clips, and run lengths.
- **Preview.** During course preparation, teachers may view the video for applicability, and select that video for incorporation into the lesson activity from either her computer at school or at home.
- **Order and reserve.** One day prior to using the video in the class, the teacher should check if the video is available at the school. If the title is not at the school, the teacher may order the video for delivery from the NOC to the routing server in the school. Teachers can order as many videos as they need – there are no additional charges associated with this ordering process. To ensure that their video is available the day of the class, teachers may reserve the video for a period of time. Unreserved videos may be automatically deleted by the system to provide space for new requests.
- **Play.** Videos that are at the school may be played with full VCR-like commands and will be streamed from the AchieveXpress server at the school.
- **Live scheduling.** Both the interactive TV and Videoconferencing functionality are scheduled and controlled with the central portal management tools.
- **Automatic archiving.** All interactive TV programs will be automatically archived to the NOC, listed in the video catalog and available for on-demand use.

The AchieveXpress service will provision each customer site with the following connectivity:

Two-way Satellite network for dedicated WAN with a minimum of 5 Mbps (burstable), dedicated to the transmission of content to the schools.

## 5.0 Pricing

AchieveXpress provides a comprehensive digital transmission service for distance learning. The key elements of the AchieveXpress solution are the distance learning circuits, the IP transport via two-way satellite, and the intelligent management of the service to support on-demand requests from teachers and administrators, all delivered as a fully managed telecommunications service.

AchieveXpress IC service provides the advantages of live programming, offered over the robust AchieveXpress IC network, with interactive controls, but limited real time interactivity, to facilitate distance learning for students in remote classrooms.

AchieveXpress VC service provides the advantages of real time interactivity to support live instruction and collaborative educational meetings, delivered over the AchieveXpress VC network.

These products are available as stand alone dedicated distance learning circuits, and are eligible for reimbursement as a fully managed telecommunication service(s). These dedicated distance learning circuits are provided by Achieve Telecom and in conformity with the conditions for On-premise Equipment as detailed in Section 4.4 of this response. Please note that a discount is available if multiple services are ordered. Please see Section 5.1 for details.

## 5.1 Feature and Pricing Schedule

Feature & Pricing Schedule				
Feature		Service Options		
		AchieveXpress	AchieveXpress IC	AchieveXpress VC
For All Services				
Network Routing Server		✓		
Satellite Dish		Optional	Optional	Optional
Satellite Decoder / Encoder		Optional	Optional	Optional
Cabling		✓	✓	✓
Connection to School's LAN		✓		
Site Installation & Testing		✓	✓	✓
24/7 Telephone / Email Support Desk		✓	✓	✓
5 Mbs/Sec Satellite link to NOC		Optional	Optional	Optional
Network Monitoring		✓	✓	✓
System Maintenance		✓	✓	✓
NBD Hardware Replacement		✓	✓	✓
For ITV Locations				
Interactive TV Codec			✓	
Connection to Satellite Network			Optional	
Installation & Testing for ITV			✓	
Interactive TV Server Maintenance			✓	
Camera/ Microphones for ITV			Not Included	
For Video Conferencing Locations				
Codec				✓
Connection to Satellite Network				Optional
Installation & Testing of VC				✓
Codec Maintenance				✓
Monitor, Camera, & Microphones*				✓
Pricing - Per Location				
One-time setup & installation charge		\$150	\$200	\$200
Monthly telecommunications charge				
Service with Satellite Network		\$3,750/ mo.	\$4,000/ mo.	\$4,000/ mo.
Service without Satellite Network		\$3,000/ mo.	\$3,500/ mo.	\$3,500/ mo.

Discounts available for multiple services: 25% Discount for any two services

40% Discount for all three services

\* Videoconferencing service needs to be cost allocated for e-rate reimbursement; Achieve Telecom's Videoconferencing service is 77% eligible.



**5.2 Brockton Monthly Telecommunications Service Charges**

Units	Service	Price	Extended Price	E-Rate Eligibility	Amount Eligible for E-rate Reimbursement
1	AchieveXpress with Satellite Network	\$3,750.00	\$3,750.00	100%	\$3,750.00
29	AchieveXpress without Satellite Network	\$3,000.00	\$87,000.00	100%	\$87,000.00
Totals			\$90,750.00		\$90,750.00

Total Cost of Telecommunications Digital Transmission Service for 30 sites in Brockton Public Schools \$1,089,000.00.

Achieve Telecom Network of MA, LLC.  
3 Centennial Drive  
Peabody, MA 01960

M.D.T.E. Tariff No. 1  
1<sup>st</sup> Revised Page 1



TARIFF MADE AND FILED BY

Achieve Telecom Network of MA, LLC.

SHOWING THE REGULATIONS AND SCHEDULES OF CHARGES APPLICABLE TO  
INTRASTATE INTEREXCHANGE ACCESS TELECOMMUNICATIONS SERVICE  
WITHIN THE COMMONWEALTH OF MASSACHUSETTS

3. The Customer shall remit payment of all charges to any agency authorized by the Company to receive such payment
4. Payment term is net 30 days, or as mutually agreed in writing between the Customer and the Company. If the bill is not paid within the agreed payment term following the mailing of the bill, the account will be considered delinquent.
5. A delinquent account may subject the Customer's service to temporary disconnection.
6. Failure to receive a bill will not exempt a Customer from prompt payment of any sum or sums due the Company.
7. In the event the Customer is over-billed, an adjustment will be made to the Customer's account and the Customer will be deemed to not owe the over-billed amount. If the Customer is under-billed, the Customer shall pay in lump sum the under-billed amount.

#### ***2.2.B.5 Special Provisions for Schools and Libraries***

The Schools and Libraries Discount Program permits eligible schools (public and private, grades Kindergarten through 12) and libraries to purchase the Company services offered in this Tariff at a discounted rate, in accordance with the Rules adopted by the FCC in its Universal Service Order 97-157, issued May 8, 1997. As indicated in the Rules, the discounts will be between 20 and 90 percent of the pre-discount price, which is the price of services to schools and libraries prior to application of a discount. The level of discount will be based on an eligible school's or library's level of economic disadvantage and by its location in either an urban or rural area. A school's level of economic disadvantage will be determined by the percentage of its students eligible for participation in the National School Lunch Program, and a library's level will be calculated on the basis of school lunch eligibility in the public school district in which the library is located. A non-public school may use either eligibility for the national school lunch program or other federally approved alternative measures to determine its level of economic disadvantage. To be eligible for discount, schools and libraries will be required to comply with the terms and conditions set forth in the Rules. Discounts are available only to the extent that they are funded by the federal Universal Service fund. Schools and libraries may aggregate demand with other eligible entities to create a consortium.

#### ***2.2.B.5.(a) Schools and Libraries Regulations***

##### ***2.2.B.5.(a)I Obligations of eligible schools and libraries***

Schools and libraries and consortia shall participate in a competitive bidding process for all services eligible for discounts, in accordance with any state and local procurement rules and in accordance with both FCC and USAC Rules.

Schools and libraries and consortia shall submit requests for services to the Schools and Libraries Division, as designated by the FCC, and follow established procedures.

Services requested will be used for educational purposes. Services will not be sold, resold, or transferred in consideration for money or any other thing of value. Qualifying schools and libraries that have both applied for and received approval for discounts under the FCC's Universal Service Administrative Company (USAC) E-Rate program for this service must file a USAC Form 486 designating the Company as the supplier of this service, prior to initiating service. The discounts supplied by the USAC program shall be credited to the Customer's account and the Customer shall only be invoiced for the non-discounted portion of the service.

***2.2.B.5.(a)II Obligations of the Company***

The Company will offer discounts to eligible schools and libraries on commercially available telecommunications services contained in this Tariff. All services contained in this Tariff are eligible for discount and fully comply with the Rules.

The Company will offer services to eligible schools, libraries, and consortia at prices no higher than the lowest price it charges to similarly situated non-residential customers for similar services (lowest corresponding price).

In competitive bidding situations, the Company may offer flexible pricing or rates other than in this Tariff, where specific flexible pricing arrangements are allowed, subject to Massachusetts Department of Telecommunications and Energy approval.

***2.2.B.5.(a)III Discounted Rates for Schools and Libraries***

Discounts for eligible schools and libraries and consortia shall be set as a percentage from the pre-discount price, which is the price of services to schools and libraries prior to application of a discount.

The discount rate will be applied to eligible intrastate services purchased by eligible schools, libraries or consortia.

The discount rate is based on each school's or library's level of economic disadvantage as determined in accordance with the FCC Order or other federally approved alternative measures, as permitted by the Rules, and by its location in either an urban or rural area.

The Schools and Libraries discount matrix for eligible schools, libraries and consortia is included below for reference:

INCOME Measured by % of students eligible for the National School Lunch Program	URBAN LOCATION  E-Rate Discount	RURAL LOCATION  E-Rate Discount
If the percentage of students in the school qualifying for the National School Lunch Program is...	...and the school is in an URBAN area, the E-rate discount will be...	...and the school is in a RURAL area, the E-rate discount will be...
Less than 1%	20%	25%
1% to 19%	40%	50%
20% to 34%	50%	60%
35% to 49%	60%	70%
50% to 74%	80%	80%
75% to 100%	90%	90%

#### **2.2.B.6 Deposits**

The Company reserves the right to examine the credit record of the Customer. If the Customer's financial condition is unknown or unacceptable to the Company, the Customer may be required to provide the Company with a security deposit of up to two months service charges that the Company may apply against overdues charges. The Company credits interest on deposits annually, or upon termination of the service, or upon return of the deposit. The receipt of a deposit does not relieve the Customer for their responsibility to pay bills promptly. Interest on any deposits shall be calculated in conformance with 220 CMR 26.09.

#### **2.2.B.7 Advance Payments**

For Business Customers for whom the Company determines an advance payment is necessary, the Company reserves the right to collect an amount not to exceed two (2) months estimated charges as an advance payment for this service. This will be applied against the next month's charges and a new advance payment may be collected for the next month, if necessary.

#### **2.2.B.8 Taxes**

All federal excise taxes, and state and local sales, use, and similar taxes, are billed as separate line items and are not included in the quoted rates, unless otherwise provided in this tariff.



**AFFIDAVIT**

1. My name is Anne Thompson.
2. Presently, I am employed by Trinity Catholic Academy Brockton in the position of Technology Consultant.
3. From January of 1997 through January of 2007, I held the position of Technology Coordinator/director for the Brockton Public School District.
4. My responsibilities as Tech Director included the oversight of the process for preparing, submitting and processing applications for financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC"). In doing so I worked with an E-Rate Program consultant engaged by the District to help ensure that the District was in compliance with the rules and regulations that govern the E-Rate Program.
5. Consistent with my responsibilities, I participated in the District's application process for E-Rate Program support for Funding Year 2007-2008 relating to FCC Form 470 Application No.560310000617305 for certain eligible telecommunications services ("Application"). Part of that participation included meeting, after the required posting of the Application with USAC, with representatives of Achieve Telecom Network of Massachusetts, LLC ("Achieve") to receive a presentation about Achieve's digital transmission services. I also reviewed a written proposal submitted by Achieve in response to the Application. To my knowledge, Achieve was the only company to respond to our request for proposals for these services.
6. At all times we took necessary steps to comply, and I believe did comply, with all E-Rate Program rules and with any applicable state and local procurement rules.

I believe that we took all necessary steps to ensure that we conducted a fair and honest competitive bidding process. Achieve was an E-Rate approved provider of such services and was also approved by the Commonwealth of Massachusetts as a provider of such services.

7. At no time during any of my interactions with Achieve or any of its representatives was I ever informed of, made aware of, or otherwise led to believe or suspect that Achieve had any partnership or affiliation with United States Distance Learning Association ("USDLA"). In fact, even as of this date I am unaware of any partnership or affiliation between Achieve and USDLA except to the extent that I have been made aware that the same has been alleged by USAC in a Notification of Commitment Adjustment Letter.

8. Achieve did inform the District of the opportunity to apply for a grant from USDLA to cover the District's share of the cost of the services ("District Share") covered by the Application. Achieve also generally noted that there were other potential sources of such grants.

9. Achieve never represented, either orally or in writing in any way that it was offering a service that would be of "no cost" to the District. Achieve never represented, either orally or in writing, that if the District selected Achieve as its service provider and applied for a grant from USDLA that approval of the grant by USDLA was guaranteed. Achieve did not present an automatic Grant from USDLA as part of the Achieve service proposal made to the District.

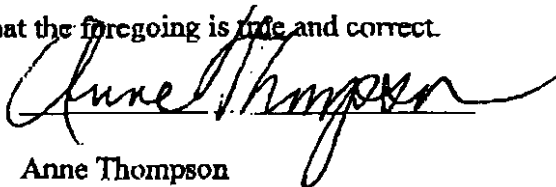
10. The District had sufficient funds in its overall technology budget to cover the District Share for its E-Rate Program supported services, including the service ultimately obtained from Achieve.

11. Again, Achieve was the only vendor to submit a bid or proposal in response to our RFP.

12. The District obtained, prepared and filed its own application with USDLA for a grant. Achieve was not involved in any way in the grant application process. District personnel dealt directly with USDLA personnel in completing the necessary forms to apply for the grant. USDLA never indicated in any way that it was affiliated with or in partnership with Achieve.

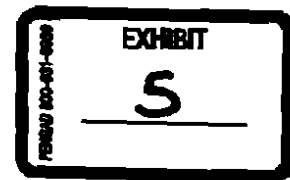
13. Any partnership or affiliation between Achieve and USDLA, if any existed, existed without the knowledge of the District, and the District was unaware of any impact of such partnership or affiliation on the price of Achieve's services in its proposal, if any.

I declare under penalty of perjury that the foregoing is true and correct.



Anne Thompson





### AFFIDAVIT

1. My name is Daniel P. Vigeant.
2. Presently, I am employed by the Brockton Public School District (the "District") as the Director of Technology Services. My immediate predecessor was Anne Thompson.
3. My responsibilities as Director of Technology Services include oversight of programs benefiting from financial support from the Schools and Libraries Support Mechanism ("E-Rate Program") administered by the Universal Service Administrative Company ("USAC").
4. Consistent with my responsibilities, I have had the opportunity to meet and speak with representatives of Achieve Telecom Network of Massachusetts, LLC ("Achieve") the vendor that provides certain telecommunications services to the District resulting from FCC Form 470 Application No.560310000617305.
5. I am informed and believe that Achieve was at all times during which services have been provided by it to the District an E-Rate approved provider of such services and that Achieve was also approved by the Commonwealth of Massachusetts as a provider of such services.
6. At no time during any of my interactions with Achieve or any of its representatives was I ever informed of, made aware of, or otherwise led to believe or suspect that Achieve had any partnership or affiliation with United States Distance Learning Association ("USDLA"). In fact, even as of this date I am unaware of any partnership or affiliation between Achieve and USDLA except to the extent that I have

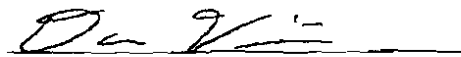
been made aware that the same has been alleged by USAC in a Notification of Commitment Adjustment Letter.

8. Achieve has never represented to me, either orally or in writing in any way that it was offering a service that would be of "no cost" to the District. Achieve has never represented to me, either orally or in writing, that if the District selected Achieve as its service provider and applied for a grant from USDLA that approval of the grant by USDLA was guaranteed.

9. Any partnership or affiliation between Achieve and USDLA, if any existed, or if any exists now, existed or exists without my knowledge and I believe without the knowledge of the District, and the District was unaware of any impact of such partnership or affiliation on the price of Achieve's services, if any.

10. I am informed and believe that the District has engaged in honest and open competitive bidding procedures in obtaining the services provided by Achieve; that Achieve was the only vendor that responded to the District's request for proposals for such services; and that the District is in no way responsible for or complicit in any wrongdoing which has been alleged to have occurred.

I declare under penalty of perjury that the foregoing is true and correct.



Daniel P. Vigeant

November 6, 2008



**From:** JON D GENIUCH  
**Sent:** Tuesday, October 24, 2006 9:00 PM  
**To:** DAN VIGEANT  
**Subject:** RE: AchieveXpress...

Hi Dan,  
While I will be unable to attend Thursday I will facilitate any installation/activities that are required at South Middle School on your recommendation. I have submitted the required forms to Anne Thompson for her signature. I spoke with Joy today and look forward to having this in our building.

My only concern, and this is because I have been removed from erate for quite a while now, is:

Brockton has worked with an erate consultant in the past and has utilized erate funds to cover some specific "areas of cost." We may want to find out if we are still working with the consultant and be sure that the funds we intend to access for this project do not overlap with the current "areas of cost" that are being addressed by erate funds (ex. I just want to make certain that we are not committing funds to this project that Brockton plans to use to pay phone bills).

That's it... I sincerely hope we can do this as I think it will be great for the students.

Talk to you soon,  
Dennis



**Administrator's Decision on Appeal – Funding Year 2007-2008**

April 26, 2010

Jason M. Gesing  
Murphy, Hesse, Toomey & Lehane, LLP  
75 Federal Street, Suite 410  
Boston, MA 02110

RE:	Applicant Name:	BROCKTON PUBLIC SCHOOL DISTRICT
	Billed Entity Number:	120639
	Form 471 Application No.:	575224
	Funding Request Number(s):	1590640
	Your Correspondence Dated:	November 7, 2008

Dear Mr. Gesing:

After thorough review and investigation of all relevant facts, the Schools and Libraries Division ("SLD") of the Universal Service Administrative Company ("USAC") has made its decision in regard to your appeal of SLD's Commitment Adjustment Letter ("COMAD") to Achieve Telecom Network of Massachusetts, LLC ("Achieve") and Brockton, Massachusetts Public School District ("Brockton") for Funding Year 2007 for Application Number 575224. This letter explains the basis of SLD's decision. The date of this letter begins the 60-day time period for appealing this decision to the Federal Communications Commission ("FCC"). If your Letter of Appeal included more than one Application Number, please note that you will receive a separate letter for each application.

Funding Request Number(s): 1590640

Decision on Appeal: **Denied in full**

Explanation:

- On appeal, Brockton makes several arguments as to why SLD erred in its decision to issue a COMAD and seek recovery of funds that have been improperly disbursed in Funding Year 2007. First, Brockton argues that the school district conducted a fair and open competitive bidding process and complied with all applicable rules. Furthermore, Brockton argues that it accepted the only bid it received, which was from Achieve.
- SLD disagrees with Brockton's assertions that the competitive bidding process during Funding Year 2007 was fair and open. SLD finds that Brockton was not able to conduct a fair and open competitive bidding

process based on Achieve's no-cost guarantee and that Achieve gained an unfair competitive advantage by guaranteeing grants designed to cover Brockton's non-discounted portion of costs of Achieve's services. The Special Compliance Review ("SCR") team conducted an investigation into Achieve's business practices and determined that Achieve was marketing its services as fully funded and guaranteeing that United States Distance Learning Association ("USDLA") would provide grants to applicants selecting Achieve's services to cover the non-discounted portion of the costs. Although Brockton and Achieve did not provide any documentation to SLD regarding Achieve's practice of offering fully funded services, SLD did receive such documentation from other E-Rate applicants who selected Achieve as their service provider that supports this finding. Moreover, the decision to rescind funding and seek recovery of previously disbursed funds is not solely based on this competitive bidding violation.

FCC rules require a fair and open competitive bidding process. Under the Commission's rules, service providers may not participate in the bidding process other than as bidders because, as the Commission has ruled, "direct involvement in an application process by a service provider would thwart the competitive bidding process."<sup>1</sup> Communications between applicants and service providers that unfairly influence the outcome of the competition, provide inside information, or allow the provider to unfairly compete taints the competitive process. USAC guidance provides in relevant part as follows:

The competitive bidding process must be fair and open. "Fair" means that all bidders are treated the same and that no bidder has advance knowledge of the project information. "Open" means that there are no secrets in the process, such as information shared with one bidder but not with the others, and all bidders know what is required of them.

In order to be sure that a fair and open competition is achieved, any marketing discussions held with

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<sup>1</sup> *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al., Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association*, SLD Nos. 321479, 317242, 317016, 311465, 317452, 315362, 309005, 317363, 314879, 305340, 315578, 318522, 315678, 306050, 331487, 320461, CC Docket Nos. 96-45, 97-21, 19 FCC Rcd 6858, ¶ 60 (2003). See also, *Request for Review of the Decision of the Universal Service Administrator by MasterMind Internet Services, Inc., Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 16 FCC Rcd 4028, 4032-33, ¶ 10 (2000); *Request for Review of the Decision of the Universal Service Administrator by SEND Technologies LLC, Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 07-1270 (2007); *Request for Review of the Decision of the Universal Service Administrator by Caldwell Parish School District, et al., Schools & Libraries Universal Service Support Mechanism*, Order, CC Docket No. 02-6, DA 08-449 (2008).

service providers must be neutral, so as not to taint the competitive bidding process. That is, the applicant should not have a relationship with the service provider prior to the competitive bidding that would unfairly influence the outcome of a completion or would furnish the service provider with “inside” information or allow it to unfairly compete in any way.<sup>2</sup>

The competitive bidding process in this matter was not fair or open because of Achieve offering to provide fully funded services by using USDLA grants to cover Brockton’s share of the costs.

- Brockton next argues that because SLD assigned a SPIN number to Achieve and accepted Achieve’s annual service provider certifications, that Achieve was “clearly fully-vetted by USAC and was (and apparently remains) in good standing.” Brockton Appeal at 4. Brockton cites to SLD case number 21-804432 as evidence of Achieve’s eligibility to be a service provider in the E-Rate program. Brockton also notes that Achieve is registered with the Massachusetts Department of Telecommunications and Energy (“MTDE”) and that Achieve’s “qualifications, procedures and requirements were in compliance with MTDE standards.” (Brockton Appeal at 5). Brockton argues that these facts demonstrate that Achieve was qualified to perform the services under contract with Brockton. *Id.*
- SLD agrees that Achieve has been assigned a SPIN number and has filed its annual service provider certifications as required under program rules. However, these actions do not mean that Achieve was approved or endorsed by USAC. USAC’s web site clearly states that USAC and SLD do not evaluate, approve, or endorse service providers.<sup>3</sup> Furthermore, SLD’s comments in case number 21-804432 also indicate that SLD does not determine the eligibility of service providers to participate in the E-Rate program. Thus, the facts that Achieve is assigned a SPIN number and has filed annual service provider certifications with USAC are not relevant to this appeal. Similarly, the fact that Brockton asserts Achieve is registered with MTDE also has no bearing on the current appeal.

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<sup>2</sup> See [www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx](http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx).

<sup>3</sup> See, e.g., November 2001 Announcements, *available at* [www.usac.org/sl/tools/news-archive/2001/112001.asp](http://www.usac.org/sl/tools/news-archive/2001/112001.asp) (confirming that the assignment of a SPIN number to a service providers is not an endorsement or approval of the provider); Service Provider Conference Call Minutes November 14, 2001, *available at* [www.usac.org/sl/about/call-minutes/111401.min.asp](http://www.usac.org/sl/about/call-minutes/111401.min.asp) (“Neither USAC or SLD evaluate, approve, or endorse Service Providers. If a Service Provider lists itself as approved, endorsed or certified, or if USAC’s logo is used, this is considered misleading information and the General Counsel’s Office will take action. A SPIN number is not a measure of approval or endorsement; the SPIN is used for billing purposes only.”).

- Brockton further argues that it had no knowledge of any partnership between Achieve and USDLA and was not aware that Achieve solicited donations on behalf of USDLA.
- SLD is aware that Brockton maintains that it had no knowledge of any partnership between Achieve and USDLA and that Brockton did not know Achieve solicited funds on behalf of USDLA. However, intent is not a relevant factor when determining whether program rules were violated and SLD routinely test applicants and service providers' statements and certifications in order to protect program integrity. In this case, information about the partnership between Achieve and USDLA was publicly available on USDLA's web site. USDLA's 2004 annual report states that USDLA formed a partnership with Achieve in order to pursue E-Rate K-12 monetary allocation. USDLA's 2006 and 2007 annual reports explain that USDLA's partnership with Achieve is providing revenue for the association and that the grant program that funds distance learning projects through E-Rate should be continued.<sup>4</sup> It is clear from USDLA's annual reports that the partnership with Achieve was beneficial to USDLA and that it was improving USDLA's revenue flow.<sup>5</sup>

Further, any statements that a partnership does not exist between Achieve and USDLA conflict with statements that were obtained from USDLA during the Special Compliance Review. In response to an information request, USDLA CEO John G. Flores specifically named Achieve as one of the members of USDLA and noted that USDLA was "fortunate that many companies who have an interest in e rate opportunities with school districts across the country are members of USDLA."<sup>6</sup> Dr. Flores also commented that as USDLA "solicit[s] donations from philanthropic groups or private donations, [it] work[s] with [school] districts attempting to support what the e rate monies allow them to do. Achieve as a Massachusetts based company has taken advantage of this opportunity." *Id.* The information received from Dr. Flores directly conflicts with Ms. Jackson's statements that "Achieve is not a member of USDLA."<sup>7</sup>

The information regarding USDLA's partnership with Achieve is publicly available. Thus, Brockton could have learned about the partnership if it had conducted research on USDLA before applying for and accepting a grant from the organization. The fact that Brockton was unaware of this

<sup>4</sup> All three reports are available on USDLA's web site at [www.usdla.org](http://www.usdla.org).

<sup>5</sup> USDLA's Form 990s appear to confirm USDLA's comments that the partnership with Achieve was successful and was generating revenues for the association. For the years 2002 through 2005, USDLA reported a shortfall at the end of the year on its Form 990s filed with the IRS. However, in 2006 and 2007, USDLA reported a positive balance at the end of the year. (Copies of USDLA's Form 990s are available at <http://www.eri-nonprofit-salaries.com/index.cfm?FuseAction=NPO.Form990&EIN=680150292&Year=2007>.)

<sup>6</sup> Apr. 3, 2008 E-Mail from Dr. John Flores (USDLA) to Jennifer Baumann (USAC-SCR).

<sup>7</sup> July 17, 2008 Letter from Joy Jackson (Achieve) to Jennifer Cerciello (USAC-SCR).



information is not relevant since intent is not a factor for determining whether program rules were violated.

- Brockton argues that Achieve did not market its services as a “no-cost” service, nor did Achieve “guarantee” that USDLA would award grants to Brockton if Achieve was selected as the service provider. Brockton admits that Achieve informed them about the grants from USDLA that could cover their non-discounted portion. However, Brockton states that Achieve also stated there were other sources for potential grants.
- SLD disagrees with the assertion that Achieve did not guarantee USDLA grants to applicants who selected Achieve’s services and that the USDLA grants were not earmarked for Achieve’s services. SLD questioned Achieve and USDLA about whether USDLA grants were provided to other applicants who did not select Achieve as their service provider. To date, neither party has responded to the question or provided evidence to show that the USDLA grants were not tied to Achieve’s services.

It is also telling that the USDLA letter reaffirming the grant to Brockton failed to include the name of the actual project. In its USDLA grant application, Brockton titled its project the “Brockton Public Schools Distance Learning Initiative.”<sup>8</sup> However, the USDLA approval letter stated that USDLA was “very pleased to reaffirm your grant . . . to cover your portion of the Achieve Xpress Telecommunications distance-learning project that is not funded directly by E-Rate.”<sup>9</sup> The fact that USDLA appears to use a standard form letter that refers to this project as the “AchieveXpress Telecommunications distance learning project” instead using the actual project’s title adds further support to the finding that the USDLA grants are earmarked for Achieve’s services.

There is also evidence that USDLA did not provide the funding for the grant awarded to Brockton. Brockton requested a grant in the amount of \$176,580 to cover its costs in Funding Year 2007.<sup>10</sup> USDLA approved Brockton’s grant request on March 13, 2008. USAC has reviewed the IRS Form 990 that was filed by USDLA for 2007. Line Item 22, under “Statement of Functional Expenses” is where USDLA is required to report the amount it has provided in grants for that year. USDLA’s 2007 Form 990, Line Item 22 is blank and USDLA does not claim that any of its revenues were used to provide grants. It should also be noted that the one-year grant to Brockton in Funding Year 2007 was approximately 27% of USDLA’s reported revenues for July 1, 2007 through June 30, 2008.<sup>11</sup> It

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<sup>8</sup> See Feb. 19, 2008, Brockton Public School’s USDLA grant application.

<sup>9</sup> See Mar. 13, 2008 Letter from Dr. John G. Flores (USDLA) to Mr. Daniel Vigeant (Brockton).

<sup>10</sup> See Feb. 19, 2008 Brockton Public School District’s grant application for USDLA Digital Divide Fund.

<sup>11</sup> USDLA’s reported revenues to the IRS for 2007 was \$654,294. See USDLA 2007 Form 990, available at [http://207.153.189.83/EINS/680150292/680150292\\_2007\\_04BCB3BD.PDF](http://207.153.189.83/EINS/680150292/680150292_2007_04BCB3BD.PDF).